

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
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 of)
)
MOANA CORPORATION,)
)
For Reclassification Of)
Certain Lands Situated At)
Poipu, Island of Kauai.)
_____)

DOCKET NO. A 76-418

DECISION AND ORDER

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DECISION

This matter, being a proceeding pursuant to Section 205-4, of the Hawaii Revised Statutes, to consider a Petition to amend District Boundaries and reclassify from Agricultural to Urban approximately 457.54 acres of land situated at Poipu, Island of Kauai, was heard by the Land Use Commission in Koloa, Kauai, on January 12 and 13, 1977. Moana Corporation, the County of Kauai Planning Department, and the Department of Planning and Economic Development of the State of Hawaii, were admitted as mandatory parties in this Docket. Also admitted as intervening parties to the proceedings in this Docket were Walter Chang, Laura Chang, David Chang, Bernard Almeida, Judy Hamberg, Glenn Hamberg, Toshihiro Otani, Maria Otani, Arnold Meister, Ricky Shigematsu, Winona Shigematsu, Ivan Longmore, Lois Longmore, and Ohana 'O Maha'uлеpu, hereinafter called the "Intervenors". The Commission having duly considered the record in this Docket, the Findings Of Fact And Conclusions Of Law submitted by the Petitioner, the Recommendation Of Approval By Department Of Planning And Economic Development, State Of Hawaii, Of

Petitioner's Proposed Findings Of Fact, Conclusions Of Law And Decision And Order submitted by the Department Of Planning And Economic Development, the Objections To Petitioner's Proposed Findings Of Fact And Conclusions Of Law submitted by the Intervenors, the Respondent/Intervenors' Proposed Findings Of Fact And Conclusions Of Law submitted by the Intervenors, and the Objections To Intervenors' Proposed Findings Of Fact And Conclusions Of Law submitted by the Petitioner, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT RELATING TO PROCEDURAL MATTERS

1. A Petition for Intervention, a Petition for Declaratory Order, Motions for Immediate Determination, and a Request for Issuance of Subpoena Duces Tecum were filed by the Intervenors. A Motion and Memorandum in Opposition to the above were filed in response thereto by Petitioner which raised objections and arguments why the petitions, motions and request should be dismissed or denied.

2. With respect to the Petition for Intervention, the Commission finds that the applicants for intervention, with the exception of Ohana 'O Maha'ulepu, reside on or own land within a reasonable proximity of the area under petition, and that Ohana 'O Maha'ulepu is an association of residents of the Koloa-Poipu area of Kauai and whose interest is in preserving the environment in the Koloa-Poipu area.

3. With respect to the Intervenors' Petition for Declaratory Order, the Land Use Commission finds that:

(a) That although Rule 6-2(2)(c) of the Rules of Practice and Procedure require that facts or data relating to petitioner's financial condition together with petitioner's latest balance sheet or income statement be filed together with a petition for reclassification of land to the Urban District, the Petition of Moana herein was filed without a financial statement or balance sheet;

(b) The attorney for Moana communicated with the Commission, and at all times prior to the filing of the Petition herein, that a recent financial statement or balance sheet was not available for Moana at the time that the Petition was filed, and that the attorney was advised that in view of the scope and magnitude of the proposed development, it would be sufficient to file the Petition without an attached financial statement or balance sheet, so long as the latest financial statement or balance sheet for Moana was filed at the time of the hearing on the Petition;

(c) The Petition of Moana was therefore filed without a financial statement or balance sheet attached;

(d) Upon learning of the position of the Intervenors in seeking to have the Petition dismissed or the hearing continued due to the lack of a financial statement or balance sheet, every effort was made to supply all parties with the latest financial statement or balance sheet of Moana;

(e) A balance sheet of Moana, covering the period up to November 30, 1976, was served on the Commission and all parties, including the Intervenors, on January 7, 1977;

(f) The balance sheet, subsequently admitted into evidence as Petitioner's Exhibit "DD", is a simple balance sheet indicating Moana's financial condition;

(g) Arguments of the Intervenors that they would lack the time to study the balance sheet is without merit in view of the contents and length of the balance sheet and the fact that there were four days between service of the balance sheet on all parties and the date of public hearing on the Petition within which to review the said balance sheet;

(h) There was good cause for Moana not submitting its latest financial statement or balance sheet with the Petition;

(i) The Intervenors were not prejudiced by failure of Moana to submit its financial statement or balance sheet at the time of the filing of the Petition.

4. With respect to the Intervenors' Request for a Subpoena Duces Tecum for the 1975 income tax statement of Moana, such a request is without merit in that the Intervenors could not provide sufficient reason why the requested material was essential and necessary for the preparation of their case; that the requested material in all probability would not provide any additional essential information as to the financial condition of Moana which the balance sheet could not already provide; that the requested material would also disclose the financial aspects of other operations of Moana completely unrelated to the proposed project to the detriment of Moana; and that the confidentiality of Moana's other operations unrelated to the proposed development

should not be breached in the absence of any other compelling reason therefor.

5. With respect to the Motions for Immediate Determination, there is no need to elaborate thereon since the petitions and requests filed by the Intervenors were acted upon expeditiously.

6. That the objections to the motions, petitions and request enumerated in Paragraph 1 above, filed by Moana, save and except those matters relating to the failure to submit a financial statement with the Petition and the request for the subpoena duces tecum, were without merit; that there was good cause for the Commission to waive the technical requirements of filing so as to permit action on the motions, petitions and request stated in Paragraph 1 above.

7. Intervenors also filed on January 6, 1976, a Petition for Immediate Determination of Representation for Respondent-Intervenors, wherein authority was sought for Teresa S. Tico to represent the Intervenors in association with E. Courtney Kahr. With respect thereto, the Commission finds that Teresa S. Tico is a licensed attorney in good standing before the California Supreme Court, that E. Courtney Kahr is an attorney in good standing before the Hawaii Supreme Court, and in the absence of objections from other parties there was good reason for permitting such association.

8. Intervenors also filed on January 6, 1976, a Motion for Postponement of Hearing and Motion for Rescheduling of Time of Hearing to a Weeknight. With respect thereto, the Commission finds as follows:

(a) That the attorneys for the Intervenors were retained a few weeks prior to the January 6, 1977 hearing;

(b) That only a few days before the January 6, 1977 hearing did the Intervenors attempt to obtain a copy of the Petition and of the environmental impact statement (hereinafter "EIS") for the proposed development;

(c) That although the Petitioner failed to serve a copy of the Petition and EIS upon the Intervenors, no diligent attempt or effort was made by the Intervenors to obtain copies of the Petition and the EIS in that only the Planning Department of the County of Kauai was called; no request was made of the Land Use Commission, Moana, or Moana's attorney for such copies, although Moana's attorney had extra copies available upon request;

(d) That some of the Intervenors had actual notice of the Petition and of the contents of the EIS prior to the publication of the notice of public hearing on the subject Petition on December 8, 1976 in that Moana Corporation's proposal for the development of the subject property had been the subject of public hearings before the Kauai County Council several months prior and in that some of the Intervenors had participated in those hearings, reviewed Moana's proposal and EIS, and testified with respect thereto.

9. On January 7, 1977, Intervenor Ohana 'O Maha'uilepu's Petition for Intervention was denied, but the Commission reconsidered that action on January 12, 1977 and granted Ohana 'o Maha'uilepu admission as a party to this proceeding. Following its admission, Intervenor Ohana 'O

Maha'ulepu moved for a continuance of the hearing on the grounds that its late admission would unduly prejudice it in the preparation and presentation of its case. With respect thereto, the Commission finds:

(a) The same attorneys were retained by Ohana 'O Maha'ulepu and the other Intervenors;

(b) The Intervenors' attorneys were retained three weeks previously;

(c) There was sufficient time for the Intervenors' attorneys to prepare for the hearing, notice of which was first published on December 8, 1976;

(d) There was no indication nor evidence to indicate that Ohana 'O Maha'ulepu's preparation and presentation would be any different or separate and apart from that of the other Intervenors.

10. Intervenors also filed a request for subpoenas to be issued to Walter Briant, Dan Lum, Dr. Aki Sinoto, Dr. James Kumagai, and Akira Fujita, and further moved for a continuance of the hearing until the requested subpoenas could be served. With respect thereto, the Commission finds as follows:

(a) The request for subpoenas was first made on the morning of January 12, 1977, just prior to the start of the advertised public hearing on the Petition;

(b) There was no attempt by the Intervenors to have the subpoenas issued at an earlier date, although there was opportunity to so do the previous week;

(c) The failure to request subpoenas at an earlier date was the result of less than diligent efforts on the part of the attorneys for the Intervenors;

(d) That many of the witnesses which the Intervenors sought to subpoena, were on the Island of Oahu, and not the Island of Kauai, and it would have been necessary to continue the hearing in order to compel their appearance and testimony;

(e) To continue the hearing for the purpose of permitting the subpoenas requested by the Intervenors to be served would unduly and unnecessarily delay the proceedings, and was not warranted under the circumstances;

(f) Representations were made by the Intervenors as to the proposed testimony of those persons sought to be subpoenaed. The Commission therefore took the Intervenors' request for subpoenas under advisement and acted upon the request at the close of the evidence presented by the Petitioner, the County of Kauai Planning Department, and the Department of Planning and Economic Development. The Commission finds that the areas of testimony by the persons sought to be subpoenaed, i.e., the development of the water source in the Koloa-Poipu area, the archaeological significance of the subject site, the concerns of the State of Hawaii Department of Health, and the proposed maintenance and operation of the sewage treatment plant were adequately covered and discussed by expert witnesses called by the other parties in this Docket. The presence of those persons sought to be subpoenaed to testify on the areas already covered by testimony and files and records would not justify a delay or continuance of the hearing under the circumstances.

CONCLUSIONS OF LAW RELATING TO PROCEDURAL MATTERS

1. In that the position of the Intervenors concerning the proposed reclassification is not substantially the same as the position of any other party already

admitted to the proceeding, and in that the admission of the Interveners will not render the proceedings inefficient and unmanageable, their admission pursuant to Section 205-4 (b)(4) is appropriate, and accordingly, Interveners are hereby granted leave to intervene as parties in this Docket.

2. With respect to the Interveners' Petition for Declaratory Order, there was good cause for the filing of the Petition herein without a financial statement or balance sheet attached thereto and permitting Moana to submit its latest balance sheet prior to the commencement of the public hearing. Accordingly the requirements of Rule 6-2(2)(c) of the Rules of Practice and Procedure are waived, and this Petition will not be treated as a defective petition pursuant to Rule 2-3(5) of the Rules of Practice and Procedure.

3. With respect to the Interveners' Request for a Subpoena Duces Tecum for the 1975 income tax statement of Moana, the same is denied within the discretion of the Commission for failure of the Interveners to produce sufficient reasons requiring the issuance of the subpoena duces tecum.

4. With respect to the objections raised by Moana to the Petition for Intervention, Petition for Declaratory Order, Motions for Immediate Determination, and Request for Subpoena Duces Tecum, the objections, save and except those relating to the failure to submit the financial statement and the request for the subpoena duces tecum, are overruled. The Commission waives the technical requirements raised by Moana's objections.

5. There being good reason and without objections, the Commission grants the Petition for Immediate

Determination of Representation for Respondent-Intervenors.

6. The Intervenors' respective motions for continuances and/or for rescheduling of the public hearing on the above Petition are denied within the discretion of the Commission for the reasons elaborated in the preceding findings.

7. With respect to the Intervenors' request for the issuance of subpoenas, the same is denied within the discretion of the Commission for the reasons elaborated in the preceding findings.

FINDINGS OF FACT RELATING TO RECLASSIFICATION

1. The Petitioner Moana Corporation is a California corporation, licensed to do business within the State of Hawaii. Its principal place of business is 451 Jackson Street, San Francisco, California, and it maintains a place of business at Poipu, Kauai, Hawaii. The Petitioner has been in existence since 1969, is a privately-held corporation, and develops and manages vacation and resort-destination areas as its primary type of business. The Petitioner has developed other resort destination condominium projects in the past in the continental United States, as well as the existing Kiahuna project at Poipu, Kauai, Hawaii, and is qualified and experienced to develop a project of the size and magnitude proposed.

2. The subject parcel is situated at Poipu, Kauai, Hawaii, and contains an area of 457.54 acres. Petitioner's Exhibit "A" is a true and correct metes and bounds description of the outside perimeters of the subject area. The subject area is more particularly identified by the following Kauai Tax Map Keys:

(a) 2-8-12-01, and 2-8-14-01, 05, 06 and 08, owned by the A. F. Knudsen Trust and the Eric A. Knudsen Trust;

(b) 2-8-12-09, 2-8-13-2 and 05, 2-8-14-07, and 2-8-15-77, owned by Grove Farm Company, Inc.;

(c) 2-6-04-15, owned by McBryde Sugar Company, Ltd.; and

(d) 2-8-13-04, owned by the Roman Catholic Church.

The maps and aerial photographs admitted as Petitioner's Exhibits "C", "C-1", and "C-2", as amended, correctly indicate the location and extent of the subject area.

3. The Petitioner received authority from the present owners of the subject parcels to petition for Boundary Amendment, as evidenced by Petitioner's Exhibits "D" through "G". The parcels presently owned by Grove Farm Company, Inc., McBryde Sugar Company, Ltd., and the Roman Catholic Church are presently under a land exchange with the A.F. Knudsen and Eric A. Knudsen Trusts.

4. The present Land Use classification for the subject area is "Agricultural", and the Petitioner is seeking reclassification to the "Urban" district classification. The subject parcel abuts the present Poipu Urban District on the southern and a portion of the eastern and western boundaries. The remaining boundaries of the subject area abut the present Agricultural District. The present land use classification on the subject parcel and neighboring lands are shown on Petitioner's Exhibit "H".

5. The present County of Kauai General Plan designates the subject area as a "Project District".

Petitioner's proposal for development of the subject property conforms with the County of Kauai General Plan. The present County of Kauai zoning on the subject parcel is "open". The County of Kauai zoning will have to be amended in order to permit the proposed development.

6. Although portions of the subject property are presently being used for cattle grazing, the subject site is potentially poor for agricultural pursuits thereon because of the poor soil and climatic conditions. The subject site is presently overgrown with haole koa, kiawe trees and other scrub grasses.

7. The elevation on the subject site varies from 140 feet in the northern portion to about 20 feet in the southeastern end. The slope is approximately 3%. The subject area is not in a tsunami inundation area, except, in the event of a 50-foot wave, for a small sliver of land in the area where the proposed outdoor theater will be located.

8. The average rainfall is 45-60 inches per annum, most of which comes during the winter months from November through March.

9. The soils of the subject parcel are relatively unweathered and rocky. The Land Study Bureau of the University of Hawaii classified the subject area with an overall productivity rating of "E", which is the lowest of five possible categories. The U.S. Soil Conservation Service has classified the soils as Waikomo Series, comprised of approximately 10% Stony Silty Clay, 60% Waikomo Very Rocky Silty Clay, and 30% Waikomo Extremely Rocky Silty Clay. A

soils map of the subject area was admitted as Petitioner's Exhibit "J".

10. The Petitioner proposes to develop 300 single-family homesites, 1150 multi-family units, an 18-hole championship golf course, clubhouse, a convenience commercial shopping area of approximately 50,000 square feet of rental area, a total of 24 tennis courts, swimming pools, an outdoor theater and cultural center, and a network of bicycle paths and pedestrian walkways. The proposed layout is generally reflected in Petitioner's Exhibit "T".

11. The homesites will range in size from 6,000 square feet to 15,000 square feet. The single-family homesites will be on a "planned unit development" basis, utilizing a Horizontal Property Regime under the laws of the State of Hawaii.

12. The single-family homesites will be chosen and located pursuant to the individual characteristics of each area and will be so situated to maximize the surrounding amenities and minimize the intrusion into the natural environment. A "PUD" conceptual approach was selected for more flexibility in the planning and siting of the single-family homesites.

13. The Petitioner intends to sell the single-family homesites, based on present construction and development costs, at prices ranging from \$5,000 to \$40,000, of which the majority will be in the \$10,000 to \$20,000 range. Of the 300 single-family homesites, Petitioner proposes to sell approximately 30 lots for \$5,000, 30 lots for \$7,500, 80 lots for \$10,000, 60 lots for \$15,000, 60 lots for \$20,000, 30 lots for \$30,000, and 10 lots for \$40,000.

Should construction and development costs increase appreciably, the costs for the single-family homesites will be increased proportionately.

14. The single-family homesites will be marketed and made available to the local Kauai residents first for a reasonable period of time prior to sale to non-Kauai residents. The exact period of time is to be determined by the Petitioner and the County of Kauai, although the Petitioner has indicated no objection to as long as 120 days. The Petitioner projects that approximately 25% of the single-family homesites will be sold to Kauai residents, 25% to Hawaii residents not living on Kauai, and 50% to non-Hawaii residents.

15. The Petitioner presently proposes to sell the single-family homesites as leasehold interests; however, a tentative agreement has been reached between the Petitioner and the Knudsen Trusts whereby the Petitioner may be acquiring the fee interest in the single-family homesites and thereupon offering the fee interest in the same to the ultimate purchaser. The Petitioner estimates that the acquisition of the fee interest will result in a price increase of approximately 30% for the individual homesites.

16. Based on projections in the Petitioner's Exhibit "LL", the lowest priced single-family homesite with a modest house constructed thereon should be affordable by 40% of the households on Kauai if sold on a leasehold basis. Approximately 35% of the households on Kauai would be able to afford the next lowest priced homesites.

17. The Petitioner testified that the lower priced single-family homesites will be sold at prices below the

development and acquisition costs, but that the selling prices for the higher priced homesites will compensate for the deficiency; that the Petitioner's method of marketing is geared towards attracting residents of varying income levels; that so long as the average selling price for the lots is sufficient, the sales and marketing approach proposed for the proposed development is economically feasible; and that this sales and marketing approach will result in a mixture of residents from different economic levels to the benefit of the development and the community.

18. The Petitioner is also considering financing of the homesite purchase and house construction through means of homesites sales via agreements of sale with 10% down and the remaining balance due and payable in five years, with a subordination to conventional construction financing.

19. The Petitioner is also willing to consider suggestions in the drafting and implementing of restrictive covenants and conditions on the construction of houses and uses of the homesites so as to minimize the impact on the life-style of the present residents of the Koloa-Poipu area.

20. The project will also consist of the construction of 1,150 multi-family units. These multi-family units will be built and sold under a "Horizontal Property Regime" pursuant to the laws of the State of Hawaii. The multi-family units will range from one to three bedrooms, and from 750 to 1500 square feet of living area and will be built in buildings ranging from one to three stories in height.

21. The price of the multi-family units will range from \$40,000 to \$80,000, with an average selling price of approximately \$60,000. The projected selling prices will

be below that of the existing Kiahuna project because of the greater distance from the coastline. The Petitioner anticipates that the buyers of the multi-family units will be primarily Mainland residents, who will buy the units either as an investment, as second homes, or as their principal place of residence.

22. Approximately one-half of the multi-family units will be sold under a restriction of mandatory enrollment in the rental pool. It is further anticipated that a number of the remaining units not under the mandatory rental pool restriction, will nonetheless voluntarily join in the rental pool. Those units in the rental pool will be utilized for a hotel operation, managed by the Petitioner. Accordingly, all the necessary jobs related to a hotel operation, such as maid service, bellboys, desk clerks, groundskeepers, and the like, will be generated by the proposed development.

23. The Petitioner also proposes to develop a convenience commercial shopping area of around 50,000 square feet of leasehold floor area. The proposed shopping area will contain convenience shops such as sporting goods store, grocery store, delicatessen, laundromat, and perhaps professional offices. The proposed shopping area is intended to primarily serve the residents of the project.

24. The store area will be made available to local Kauai merchants who desire to lease space. The Petitioner indicated that the projected lease rental for the commercial area would be approximately \$.50 per square foot per month, and the length of the lease term would be dependent on what was desired by the ultimate lessee.

25. An outdoor theater and cultural center is also included in the project. This theater/cultural center will be approximately three acres in size and will be situated on the Southeastern corner of the project site, although the exact location thereof has not been finally determined.

26. In response to objections raised by the Intervenors about the noise and disturbance which may be created by the theater/cultural center in a location abutting the existing Weliweli subdivision, the Petitioner indicated that the theater/cultural center can be relocated further away from the Weliweli subdivision, and that its actual location will be approximately opposite the Poipu Beach Park rather than the location shown on Petitioner's Exhibit "T". The Petitioner also stated that controls such as the limitation on the number and type of amplification equipment, and the barring of "rock concerts" will be implemented if noise arising out of the use of the facilities became a problem or unreasonably offensive to the surrounding residents. The Petitioner will retain ownership and control of the theater/cultural center, but will permit private and public groups to use the same without a fee, save and except compensation for the costs of cleaning up, security controls, etc.

27. Also included in the project is an 18-hole championship golf course. Although testimony was presented by the Intervenors that the standard for golf courses is one 18-hole golf course per 30,000 population, that is an urban standard. The standard for a resort-destination

area, as established by expert evidence, is one 18-hole golf course per 750 hotel rooms. The golf course will be available for public play, and the projected fees will be lower or comparable to other public-play courses on the Island of Kauai.

28. Also included as part of the proposed development are swimming facilities and a total of 24 tennis courts, all of which would be made available to public use at reasonable usage fees. The Petitioner presently permits the Kauai Fire Department and the Y.M.C.A. to use the pool without charge and intends to continue this practice. The project will also include a network of bicycle paths and pedestrian walkways over the project site which will also be open to public use.

29. As a part of the proposal, the Petitioner will dedicate to the County of Kauai, approximately 20 acres makai of the Poipu Beach Road and abutting the Poipu Beach Park for the expansion of the park. The value of the land to be dedicated to the County of Kauai is \$2,722,700.00, as evidenced by the study admitted as Petitioner's Exhibit "EE". Approximately 11 or 12 acres of the 20 acres to be dedicated by the Petitioner to the County for park purposes is already required under the County of Kauai's Subdivision and Comprehensive Zoning Ordinances.

30. The overall density of the project is 3.02 units per acre, and approximately 65-70% of the subject property will remain in open space after completion of the total project.

31. The presence of extensive archeological remains on and in the area of the subject property is

generally known. Petitioner, therefore, commissioned the Bernice P. Bishop Museum to conduct an archeological survey of the area which was filed in this proceeding as Petitioner's Exhibit "X" and is entitled Archeological Reconnaissance Survey Of Knudsen Trust Land At Koloa, Poipu, Kauai. That survey reveals and the Commission therefore finds as follows:

(a) A substantial number of archeological sites exist on approximately 200 acres within the southern and eastern portions of the subject property;

(b) These sites fall within the categories of platforms or varied forms; enclosures; modified actual features such as outcrops and sinkholes; large wall-structures; agricultural complexes with varied mounds, terraces and plots; lava tubes; simple stone structures with no definite functions; irrigated pondfields (lo'i) and irrigation ditches (auwai); foot trails and historic sites such as houses, tombs, and ovens;

(c) These sites appear to be the remains of extensive agricultural complex that at one time stretched from Koloa Town to the Coast. There is a general paucity of information on aboriginal agriculture, and because most of the central, northern, and western portions of the subject property were cleared in the past for agricultural activity such as sugar cane cultivation and grazing, these sites represent the only substantially intact complex of sites remaining;

(d) Further archeological investigation will be necessary to determine the significance of these sites and the feasibility of their salvage or preservation. As a

condition upon General Plan Amendment, the Kauai County Council has required that a more detailed and comprehensive archeological study be conducted and submitted to the County of Kauai Planning Department for approval prior to actual development of the proposed project. That comprehensive study will cost a minimum of \$40,000 and will take three to four months to complete;

(e) The Petitioner has represented that he is committed to a more detailed and comprehensive archeological study of the subject property and that he would preserve those areas or sites within the subject property which the Bernice P. Bishop Museum determines to be archeological significant and worthy of preservation.

32. The known fauna consists of rodents and other small field animals as well as various types of birds and insects. While most of the on-site animal life will be displaced during the construction phase, some is expected to return to the subject area after completion of the project. No significant adverse effect on the known fauna is expected as a result of the project.

33. Concern was raised, however, about the adequacy of the biological section of the Environmental Impact Statement submitted by the Petitioner and the possible existence of several rare species of cave animals on the subject property. The testimony established that two very rare cave animals, the blind, eyeless, big-eyed hunting spider and the blind, terrestrial sandhopper have been found in caves just outside of the subject property, and that these animals are among the most remarkable specialized cave animals in the world. In that the archeological reconnaissance survey done by the Bernice P. Bishop Museum revealed

that there are caves on the subject property, there is a possibility that these rare cave animals inhabit areas in which the Petitioner proposes to develop. The Petitioner has represented that a survey of the caves on the subject property will be performed, and that if any are found to be significant and worthy of preservation they will be preserved as part of a landscape plan. The Environmental Quality Commission and the Environmental Center have recommended that a more thorough biological survey of the subject property be conducted.

34. Although use of the existing water system for Koloa-Poipu is at capacity, domestic water will be available for the proposed project through the development of additional water sources by the County of Kauai Department of Water for the Koloa-Poipu area. The Petitioner will contribute its share towards the cost of developing storage and transmission facilities for the expanded domestic water system in the Koloa-Poipu area. A network of water lines and mains is planned within the project infrastructure for the project, which will adequately handle domestic water and fireflow needs, as indicated by Petitioner's Exhibit "O".

35. Although there was testimony that a test well in the Koloa-Poipu area struck brackish water, there was also testimony by an expert witness that the striking of brackish water at that shallow depth is, given the geology of the Koloa-Poipu area, in no way conclusive that potable water will not be found. On the contrary, the witness concluded that the probability that digging the well deeper will result in reaching potable water is good.

36. Expert testimony also indicated that even if only brackish water is obtainable from the well, given the low chloride content of the brackish water, such brackish water could easily be mixed with other water already available in the area to reach the standard of potable water, at minimal added cost.

37. The projected domestic water demand from the completed project of 457 acres is 592,000 gallons per day, which is considerably less than agricultural uses, i.e., 1,000,000 gallons per day per 100 acres for sugar cultivation.

38. Irrigation water for the golf course and landscaped areas will be supplied through brackish water wells on-site, as well as using the treated effluent from the sewage treatment plant. The use of treated effluent from a sewage treatment plant is a practice accepted by the Department of Health, and is presently in use in other areas of the State of Hawaii.

39. Adequate educational facilities are available to accommodate additional students which may result from the proposed development. The Department of Education indicates that the project will not result in any difficulties in the accommodation of additional students.

40. Sewage collection and treatment will be handled on-site through the use of a sub-regional sewage treatment plant on the subject site. Projected sewage flow is 446,000 gallons per day, and the sewage treatment plant will be designed to handle that capacity and must be constructed according to the standards of the State Department of Health.

41. Although there was testimony that the existing sewage treatment plant serving the present Kiahuna condominiums is experiencing odor problems, the problems stem from the oversizing of the mains and lift stations to serve the Kauai Sheraton, the Obayashi-Gumi development, and the Kiahuna condominiums. These problems will not be present in the proposed development because the system will not be oversized and because there will be a continual gravity flow of sewage to the plant not requiring lift stations.

42. The sewage treatment plant will be turned over to the County of Kauai upon completion; however, the Petitioner will reimburse the County for the costs of operation and maintenance of the plant. The costs of operation and maintenance of the plant will in turn be passed on the residents on the subject site, and is anticipated to amount to a few dollars per month per residential unit.

43. Solid waste disposal will be handled through private contract collectors, with ultimate disposal into the County sanitary landfills. The County is presently looking for a site in order to relocate the Koloa dump to a central sanitary landfill, which will be available for the disposal of solid waste resulting from the proposed development.

44. Kauai Electric, a division of Citizens Utilities Company, will be able to furnish the necessary electrical power to the proposed development.

45. Hawaiian Telephone Company will be able to furnish telephone service as required from the proposed development.

46. Gasco, Inc., will be able to furnish the necessary liquid propane gas as required for the proposed development.

47. There will be adequate police protection required for the proposed project under the existing beat assignment up to the eighth year of development. From and after the eighth year, an additional beat will be necessary.

48. Adequate fire protection is available for the proposed project, and all requirements of the Kauai Fire Department insofar as firelines and hydrants are concerned will be observed and met.

49. There was testimony that the availability of emergency medical services to the subject site was less than desirable. The testimony also indicated that the availability of emergency medical services to the existing Koloa-Poipu community is less than desirable. The Department of Health does, however, have a Highway Safety Comprehensive Medical Services Plan and the State and the County of Kauai are working together to up-grade this relatively new life support system.

50. Drainage of surface runoff water will be through the use of two diversion channels running parallel to the shoreline, which will divert the present mauka-makai direction of surface runoff into the Waikomo Stream. This will result in an increase in the flow of the Waikomo Stream, which presently drains an area of approximately 12 square miles.

51. The increase of surface runoff water directly resulting from the proposed development, at optimum flow, was calculated to be a three-inch rise for a 30-60 minutes period during a theoretical flood which could occur once every 100 years. However, surface runoff may be less in that the calculation does not take into consideration mitigating measures such as ponding on the golf course.

52. Although there is a possibility of a dust problem during the construction phase of the project, mitigating measures such as watering or oiling, grading in increments, and conformance and observance of the County of Kauai's Grading Ordinance will minimize or negate any adverse dust problems which the project may cause for the surrounding areas.

53. Although there was testimony that the existing sugar cane cultivation on the lands mauka of the subject site would be incompatible with the proposed development, the nature and scope of the incompatibility, i.e., dust and smoke from the sugar cane operations, is not of such significance or magnitude to preclude the proposed development in that the burning of the sugar crop although necessary is an occasional, every 18 to 24 months, occurrence.

54. Dust created by the cane haul road just mauka of the project site can be mitigated by paving the road, growing vegetation as a buffer, and using the golf course as an additional buffer zone. The Petitioner represented that if dust from the cane haul road did become a problem, the proper steps to alleviate the problem would be undertaken.

55. Although the project will generate additional noise usually associated with construction during construction, there is nothing which indicates that the level of noise generated will exceed State and County noise control standards or in any way be unreasonable or harmful to the residents of the surrounding areas.

56. Any noise problems resulting from the cane haul road mauka of the project site can be alleviated through the growing of vegetation as a buffer or building a berm to deflect noise.

57. The subject site is presently overgrown with haole koa, some kiawe trees, and other scrub grasses and weeds. The development will result in a change in the flora of the area to include lawn grasses, palms, and ornamentals such as bouganvillea, succulents and plumerias. This change is not significantly adverse to the environment of the area.

58. Based on studies, comparisons and projections made by the Petitioner's consultants, no significantly adverse effect on the Class AA coastal waters in proximity to the subject site will result from the proposed development. More specifically,

(a) Programs of fertilization for the golf course is analogous to that of the nearby sugar cane lands;

(b) Comparisons of the coastal waters off of the nearby sugar cane lands, utilizing Class AA standards, do not indicate any detrimental effect on the water quality resulting from the fertilization practice on the sugar lands;

(c) It is realistic to assume that the operators of the golf course will not over-fertilize the course such that the vegetation being fertilized will not be able to retain and use all of the fertilizer. Hence, the amount of excess fertilizer finding its way into the coastal waters off the project site through either percolation or surface runoff should be minimal;

(d) Although the project will result in an increase in surface runoff into the Waikomo Stream and the sea, this will not result in any increase in pollution as the subject site will ultimately be grassed, planted or covered in its entirety, and loose debris will not as now be discharged into the sea.

59. The proposed project will not adversely affect the present scenic plane of the area. Being situated mauka of the Poipu Beach Road, it will not result in any effect on the scenic plane towards the ocean. Because of its low density, large amounts of open space, slight but gradual slope, and a three-story height limitation on all structures, intrusion into the scenic plane towards the mauka direction will be minimal and not significantly adverse.

60. The proposed building schedule for the project was submitted as Petitioner's Exhibit "U", indicating a 15-year build out period. The schedule has been revised, however, in that the Petitioner now intends to develop and market all 300 single-family housing sites within the first five years of the project. All of the off-site and on-site improvements, the golf course, the clubhouse, the commercial center, the tennis complex, park dedication, bicycle and pedestrian paths, and landscaping will be completed within the first five years. The only development which will remain after the first five years of the project is construction of additional multi-family units at the rate of 75 per year over a ten year period through year 15 and construction of homes by purchasers of the 300 single-family homesites. The Petitioner has also testified that the build-out schedule can and will be accelerated if there is sufficient demand for multi-family units. Incremental districting is not appropriate. The projected cost of the total development, over the 15-year build-out period and assuming a 10% annual appreciation in costs, is \$107,000,000.00.

61. Notwithstanding objections raised by the Intervenors that Petitioner's Exhibit "DD" is not sufficient as a financial statement, said Exhibit "DD" is a balance sheet which sufficiently indicates the financial standing of the Petitioner upon which the Commission may make a determination as to the financial capability of the Petitioner to undertake and complete the proposed project. The balance sheet for November 30, 1976 of the Petitioner, Exhibit "DD", and the Petitioner's extensive resort-development experience indicate to the satisfaction of the Commission that the Petitioner is financially and otherwise able to undertake the proposed project.

62. Projections made by the Petitioner's consultants, which the Commission believes to be reasonable, indicate that the proposed project will result in an increase in resident population in the Koloa-Poipu area of 143 persons in the first year to a total of 2,688 persons in the 20th year. Including visitors, the maximum daily population of the proposed development will be approximately 5,000 persons.

63. Studies and surveys were conducted by the Petitioner's consultants of visitors staying at the Petitioner's existing development to determine their motoring habits and patterns. Based on those studies and surveys, projections were done to indicate the increased traffic on the public highways which would be generated by the proposed development.

64. Based on the projected increased traffic and using prescribed methodology, it was determined that the maximum service volume at peak hours of Poipu Road would not be exceeded, as a result of the development i.e., 992 vehicle trips per hour versus a maximum service volume of

1,069 vehicle trips per hour. Moreover, that the figure does not include the "containment factor" as discussed by the Petitioner in Exhibit "LL", which if taken into account reduces the maximum vehicle trips per hour to 876, well below the maximum service capacity of the highway.

65. During the 15-year construction phase of the project, an average of 105 construction jobs will be available annually. Of this, it is estimated that 93 will be filled by local Kauai residents. As a condition of General Plan Amendment the Kauai County Council has required that Petitioner use "local" (Kauai) contractors. In addition to the construction jobs, it is projected that the development will also provide 87 permanent jobs in the first year to 390 permanent jobs in the 15th year. A breakdown on the number and types of jobs, both permanent and temporary construction, was set forth in Petitioner's Exhibit "KK".

66. Because of the economic "multiplier" effect, the project would also generate, indirectly, additional jobs and wages. Applying the multiplier effect to the number of jobs, the 105 construction jobs directly created by the project will support 43 additional jobs resulting a total of 148 jobs within the Kauai economy. The 390 permanent jobs will support 79 additional jobs resulting in a total of 469 jobs within the island's economy.

67. Average total wages to be paid annually to the construction workers are estimated to be \$1,313,000.00. Average total wages to be paid annually to the permanent employees are estimated to be \$3,637,600.00 in the 15th year, based on today's dollars.

68. Application of the multiplier effect to the wages to be paid to construction and permanent employees results in a total economic effect of \$4,061,702.00 annually in wages from the construction jobs, and \$11,250,597.00 annually in wages from the 390 permanent jobs. The total gross annual economic effect as a result of additional jobs and wages generated by the proposed development and the application of the multiplier effect, ranges from \$8,695,020 in the first year, to \$20,263,149 in the 15th year.

69. With development comes a need for an increase in the level of governmental services demanded by the residents of the area. Petitioner's Exhibits "II" and "JJ" sets forth what the costs of these increased level of services will be, and in summary, amounts to a cumulative total in the 20th year of \$3,122,625.45 or more. This includes police protection, fire protection, parks and recreation costs, water, education, and emergency health services.

70. Increased development will also result in increased public revenues, through increases in real property taxes, personal income taxes, building permit fees, excise taxes, and the like. Projections were done by the Petitioner's consultants with respect to what the increased public revenues will be as a direct result of the proposed development which the Commission finds to be reasonable. Petitioner's Exhibit "AA" (as amended), for example, sets forth the projected increased real property tax revenues which would be generated by the development. The increased revenues from real property taxes range from \$102,573.00 in the first year, to \$988,455.00 in the 20th year.

71. A summary of the total projected increase in revenue and public expenditures are contained in Petitioner's

Exhibit "CC" (as amended). Briefly, the said Exhibit indicates that:

(a) The annual County expenditures and revenues in the 20th year are projected to be \$197,685.00 and \$1,170,851.00, respectively, for a cumulative net gain in revenues of \$973,166.00;

(b) The cumulative County expenditures and revenues in the 20th year are projected to be \$3,121,246.00 and \$13,379,049.00, respectively, for a cumulative net gain in revenues of \$10,257,803.00;

(c) The annual State of Hawaii revenues and annual other public/private expenditures in the 20th year are projected to be \$1,463,914.00 and \$248,090.00, respectively, for a net gain in annual revenues of \$1,215,824.00;

(d) The cumulative total revenues and cumulative total expenditures in the 20th year are projected to be \$18,732,412.00 and \$4,491,075.00, respectively, for a net cumulative gain in revenues over expenditures of \$14,241,337.00.

72. Although the proposed development will have some negative impact on the Koloa-Poipu area, such as more people using the beaches, more traffic, some change in the residents' lifestyles, and the possibility of higher real property taxes on existing lots and homes, as was testified to by the Intervenor's witnesses, the Commission nonetheless finds these negative impacts are not significantly adverse.

73. Although there was evidence that there are approximately 100 acres of land in the Koloa-Poipu area which are already zoned for resort-development, it is not clear whether that land is available for development. Possible future development such as a 200-room addition to

the Sheraton-Kauai, a hotel consisting of as many as 430 rooms on Amfac's property between the Waiohia and the Poipu Beach Hotel, a new 150-unit condominium adjacent to the Prince Kuhio, a 13-unit addition at Poipu Shores, and a condominium development on the Leadership Homes Tract near Poipu may significantly reduce that amount of undeveloped resort zoned land. Moreover, a proposal for a large, comprehensive, low-density, well-planned development which includes all of the amenities and recreational facilities necessary for a successful resort-development and includes houselots and homes for the Kauai community, such as Petitioner's proposal, cannot be undertaken on 100 acres of land even if consolidated into one parcel. The County of Kauai has designated Koloa-Poipu as a major resort designation area and recently amended its General Plan to accommodate Petitioner's proposed development. The Commission finds that reclassification of the subject property to permit the proposed development is reasonably necessary to accommodate growth and development of the visitor industry on Kauai.

RULING ON PROPOSED FINDINGS

Any proposed finding submitted by a party and not already ruled upon by the Commission by adoption herein or rejected by a clearly contrary finding of fact herein, is ruled upon as follows:

1. Intervenors' Proposed Findings Nos. 15, 16, 19, 21, 22, 23, 27, 29, 30, 33, 34, 35, 36, 40, 44, 45, 51, 54, 55, and 56 are rejected as not supported in whole or in part by the evidence.

2. Intervenors' Proposed Findings Nos. 17, 18, 20, 24, 32, 38, 39, 41, 42, 43, and 50 are rejected as contrary in whole or in part to the evidence.

3. Intervenors' Proposed Findings Nos. 25, 26, 28, 31, 52, 53, 57, 58, 59, 60, and 61 were withdrawn by the Intervenors.

CONCLUSIONS OF LAW RELATING TO RECLASSIFICATION

1. The standards set forth in Rule 2-2 of the State Land Use District Regulations have been met and complied with, in that:

(a) The proposed development will be characterized by "city-like" concentration of people, structures, streets, urban level of services and other related land uses;

(b) The subject parcel is in close proximity to centers of trading and employment facilities, and would generate new center of trading and employment;

(c) Economic feasibility has been substantiated by the Petitioner;

(d) Basic services such as sewers, water, sanitation, schools, parks, and police and fire protection are or will be available;

(e) The proposed development provides a reserve area for urban growth based on a ten year or more projection;

(f) The subject site has satisfactory topography and drainage for the proposed development, and is reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects;

(g) The subject site is contiguous with the existing Koloa-Poipu Urban District;

(h) The subject site is designated on the County of Kauai General Plan as "Project Development", and

more specifically, the County General Plan was amended to accommodate the proposed development;

(i) The development of the proposed project will not contribute towards scattered spot urban development and will not necessitate unreasonable investment in public supportive services.

2. The proposed development is consistent with the Interim Statewide Land Use Guidance Policy, to wit:

(a) The proposed land use reclassification is reasonably necessary to accommodate growth and development;

(b) There will be no significant adverse effect upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area;

(c) Adequate public services and facilities are available or can be so provided at reasonable costs to the Petitioner, or the cost of additional services to the State or County of Kauai will be more than offset by tax revenues generated by the proposed development;

(d) The subject area is contiguous to an existing urban district, will not contribute towards scattered urban development, and will maximize use of the existing services;

(e) The proposed development will provide temporary and permanent employment to Kauai residents, and will make homesites at reasonable prices available to Kauai residents.

3. Reclassification of the subject property from Agricultural to Urban and amendment of the District Boundaries accordingly to permit the proposed resort-development

upon the following conditions, is reasonable and not violative of Section 205-2, HRS.

ORDER

IT IS HEREBY ORDERED:

That the property which is the subject of this Petition in this Docket No. A 76-418, approximately 457.54 acres, situated at Poipu, Koloa, Island of Kauai, identified by Tax Map Key Nos. 2-6-04:15, 2-8-12:01, 2-8-12:09, 2-8-13:02, 2-8-13:04, 2-8-13:05, 2-8-14:01, 2-8-14:05, 2-8-14:06, 2-8-14:07, 2-8-14:08, and 2-8-15:77, shall be and hereby is reclassified from Agricultural to Urban and the District Boundaries are amended accordingly, subject to the condition that the Petitioner substantially complies with the following representations made by the Petitioner during the course of the proceedings in its Petition to Amend District Boundaries:

1. That the Petitioner develop and market within five years from the date of this Decision and Order at least 30 single-family homesites for sale at approximately \$5,000 each, at least 30 single-family homesites for sale at approximately \$7,500 each, and at least 80 single-family homesites for sale at approximately \$10,000 each. For the purposes of this condition, the Commission expressly recognizes that the foregoing prices are approximate prices expressed in January 1977 dollars and may increase due to inflation in cost of labor and materials in delivering the homesites, and further that these prices were calculated on the basis of sale of leasehold interests. If the Petitioner

is able to obtain, and therefore offer for sale the feehold interest in the single-family homesites, these sale prices may be further increased by an amount equivalent to the additional cost to the Petitioner in obtaining the feehold interest.

2. That for a period of 120 days the Petitioner preferentially offer the foregoing single-family homesites for sale to Kauai residents before offering them for sale on the open market.

3. That the Petitioner impose anti-speculation devices upon the sale of the foregoing single-family homesites as may be mutually agreed to by the Petitioner and the County of Kauai. Such anti-speculation devices shall take the form of a Declaration of Conditions, Limitations, Covenants and Restrictions attached to and running with the land filed with the Bureau of Conveyances and with this Commission. Such covenants shall include the matters of time limits within which a dwelling must be constructed, a period of time for owner occupancy, buy back provisions and other restrictions as may be agreed upon by the Petitioner and the County of Kauai.

4. That the Petitioner consider selling the foregoing single-family homesites by agreement of sale or by sale on credit subordinated to mortgages for construction of homes to enable persons who could not qualify for a conventional financing to purchase these homesites.

5. That the Petitioner make the recreational and other amenities of the development such as the golf course, golf clubhouse, swimming facilities, tennis courts, and

theater and cultural center available for public use at reasonable usage fees.

6. That the Petitioner dedicate to the County of Kauai approximately 20 acres of land makai of Poipu Beach Road and abutting Poipu Beach Park for expansion of the park.

7. That prior to application for rezoning and before any grading of the subject property begins, Petitioner commission and complete a comprehensive archeological and biological study with actual inventories of archeological sites and flora and fauna on the subject property, and that the Petitioner preserve any archeological sites which the Bernice P. Bishop Museum believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers which the Bernice P. Bishop Museum believes to be worthy of preservation.

8. That to whatever extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Petitioner hire Kauai contractors so long as they are reasonably competitive with other contractors, and employ residents of Kauai in the temporary construction and permanent hotel related jobs. The Commission understands that the Petitioner may have to employ non-Kauai residents for particular skilled jobs when no Kauai resident possess such skills. However, the Petitioner shall cooperate with, and utilize, whatever government training programs may be available so that Kauai residents can be trained to fill such jobs. For the purposes of this condition, the Commission relieves the the Petitioner of this requirement if he is

subjected to anti-competitive restraints on trade or other monopolistic practices.

9. That the Petitioner substantially complete within five years from the date of this Decision and Order all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.

DONE at Honolulu, Hawaii, this 7th day of July, 1977, by motion passed by the Commission on April 26, 1977, in Honolulu, Hawaii.

LAND USE COMMISSION
STATE OF HAWAII

By Shinsei Miyasato
SHINSEI MIYASATO
Commissioner

By _____
EDDIE TANGEN
Chairman and Commissioner

By Mitsuo Oura
MITSUO OURA
Commissioner

By Stanley Sakahashi
STANLEY SAKAHASHI
Vice Chairman and Commissioner

By Carol B. Whitesell
CAROL WHITESELL
Commissioner

By _____
JAMES CARRAS
Commissioner

By Edward Yanai
EDWARD YANAI
Commissioner

By Charles Duke
CHARLES DUKE
Commissioner